## BEFORE THE APPEALS BOARD FOR THE KANSAS DIVISION OF WORKERS COMPENSATION

DAVID T. HENSLEY	}
Claimant VS.	Docket No. 102 792
JENSEN INTERNATIONAL, INC.	) Docket No. 192,782
AND	
MIDWESTERN INS. CO. Insurance Carrier	
AND	
WORKERS COMPENSATION FUND	}

## **ORDER**

Midwestern Insurance Company requests a review of the Preliminary Hearing Order of Administrative Law Judge John D. Clark entered in this proceeding on August 23, 1995.

## Issues

The Administrative Law Judge ordered the respondent and Midwestern Insurance Company to provide claimant with workers compensation benefits for an alleged accident occurring on August 19, 1993. Midwestern Insurance Company contends claimant recovered from that accident and suffered a new and distinct injury after December 31, 1993, when that insurance carrier went off coverage. The issue now before the Appeals Board is whether claimant is entitled to workers compensation benefits for an accidental injury on August 19, 1993 or whether claimant sustained a subsequent work-related injury that occurred after Midwestern Insurance Company discontinued insurance coverage.

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the arguments of the parties, for preliminary hearing purposes the Appeals Board finds:

(1) The Appeals Board has the jurisdiction and authority to review this preliminary hearing proceeding under the provisions of K.S.A. 44-534a, because the issue relates to whether claimant has sustained an intervening injury.

(2) The Preliminary Hearing Order of the Administrative Law Judge should be affirmed. The evidence is uncontroverted that the claimant did sustain personal injury by accident arising out of and in the course of his employment with the respondent on August 19, 1993 when he was bent over performing mechanical work. After that date, claimant experienced progressive pain in his low back. Because he had not recovered, in February 1994 claimant requested additional medical treatment. Claimant relates his symptomatology to the August 1993 incident and does not believe he sustained additional injury after that date. Additionally, the medical records presented do not support Midwestern Insurance Company's contention that claimant sustained a new injury after August 19, 1993. Based upon the evidence presented to date, it appears it is more probably true than not that claimant did not recover from the accident on August 19, 1993 and that his present symptoms are directly related to that incident.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Preliminary Hearing Order of Administrative Law Judge John D. Clark entered in this proceeding on August 23, 1995, should be, and hereby is, affirmed.

II 13 30 ORDERED.	
Dated this day of N	ovember 1995.
	BOARD MEMBER

c: Timothy Grillot, Parsons, Kansas James B. Biggs, Topeka, Kansas Ronald J. Laskowski, Topeka, Kansas Henry Menghini, Pittsburg, Kansas John D. Clark, Administrative Law Judge Philip S. Harness, Director

IT IS SO ODDEDED